Citibank Bhd v Mohamad Khalid bin Farzalur Rahaman & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-01-16 OF 2000
GOPAL SRI RAM, SITI NORMA YAAKOB AND MOKHTAR SIDIN JJCA
20 JUNE 2000

Land Law *— Charge — Notice of demand — Contracting out of National Land Code 1965 — Statutory notice to chargor could not be less than one month or such alternative period — Whether chargor can accept statutory notice of less than one month — National Land Code 1965 s 254(1)*

The respondents ('the borrowers') were the registered proprietors of a property. They charged the property to the appellant ('the bank') as security for a loan. Upon default, the bank took steps to recover the loan and interest. It gave the borrowers seven days' notice to remedy the default. That was the period prescribed in the annexure to the charge. The notice was in Form 16D as required by s 254(1) of the National Land Code 1965 ('the Code'). The borrowers did not comply and the bank commenced foreclosure proceedings. The land administrator allowed the bank's application and granted an order for the sale of the property by public auction. The borrowers then took out an originating summons against the bank and the land administrator seeking for a declaration that the order for sale was null and void. It was submitted that s 254 of the Code calls for a minimum period of one month and that the words 'or such alternative period' refer to a period of more than one month and that a chargor cannot contract out of the provisions of the section by agreeing to a notice of period of less than one month. The borrowers relied on *Kimlin Housing Development Sdn Bhd v Bank Bumiputra (M) Bhd & Ors* [1997] 2 MLJ 805 ('*Kimlin*'). The High Court judge applied what he referred to as 'the golden rule of construction' to determine the mischief which s 254 was designed to meet. The judge allowed the borrowers' summons (see [2000] 5 MLJ 421). The appellant appealed.

Held, allowing the appeal:

(1) The statement in *Kimlin* that the provisions of the Code cannot be contracted out by a chargor was made in quite a different context. It was made in the context of an attempt by a chargee to completely by-pass those provisions of the Code that mandatorily require a judicial sale of charged property. Nowhere in the judgment of the Federal Court was there any reference to an inability on the part of a registered chargor to agree to a lesser notice period (see p 102E–F).

(2) There was a serious and fundamental misunderstanding in the mind of the judge as to the nature and content of the rule of

interpretation he was applying to the case before him. It is trite that the provisions of the Land Code (Cap 138) governed the relationship between a chargor and chargee of land immediately prior to the enactment of the Code. So, if it was the judge's intention to apply the mischief rule, he was obliged to look to the previous state of the law. Yet, nowhere in his judgment did the judge examine the position that obtained before the enactment of s 254 of the Code. Neither did he sufficiently address his mind to the true purpose for which this provision was enacted. These omissions amount to a serious non-direction amounting to a misdirection of law. It fundamentally flawed the conclusion arrived at by the judge (see p 102G–H).

(3) It is plain from s 138(i)(a) of the Land Code (Cap 138) that a statutory notice to a chargor could not be less than 30 days. So, when Parliament enacted s 254(1) of the Code and employed therein the words 'or such alternative period as may be specified in the charge', it clearly intended by that phrase to alter the law by enabling a chargee to impose a period of less than a month. The Code in s 254 therefore expressly permits a chargor by contract to accept a statutory notice of less than one month (see pp 104I–105B, 105E–F).

[Bahasa Malaysia summary

Responden-responden ('peminjam-peminjam') adalah tuan punya berdaftar suatu hartanah. Mereka telah menggadaikan hartanah tersebut kepada perayu ('bank tersebut') sebagai jaminan untuk suatu pinjaman. Akibat keingkaran, bank tersebut telah mengambil langkah-langkah untuk mendapat kembali pinjaman tersebut dan juga faedah. Ia telah memberikan peminjam-peminjam tujuh hari notis untuk meremedikan keingkaran tersebut. Ini adalah tempoh yang diperuntukkan di dalam lampiran kepada gadaian tersebut. Notis adalah dalam bentuk Borang 16D seperti yang diperuntukkan oleh s 254(1) Kanun Tanah Negara 1965 ('Kanun tersebut'). Peminjam-peminjam tidak mematuhi dan bank tersebut telah memulakan prosiding penjualan. Pentadbir tanah telah membenarkan permohonan bank tersebut dan memberikan perintah untuk penjualan hartanah tersebut melalui lelong awam. Peminjam-peminjam kemudian mengeluarkan saman pemula terhadap bank tersebut dan pentadbir tanah untuk meminta deklarasi bahawa perintah penjualan tersebut adalah batal dan tak sah. Dihujahkan bahawa s 254 Kanun tersebut memerlukan tempoh minima sebulan dan bahawa perkataan-perkataan 'atau tempoh alternatif sedemikian' merujuk kepada satu tempoh yang lebih dari sebulan dan pemberi gadaian tidak boleh berkontrak luar daripada peruntukan seksyen tersebut dengan menyetujui kepada sustu notis yang kurang daripada sebulan. Peminjam-peminjam telah bergantung kepada *Kimlin Housing Development Sdn Bhd v Bank Bumiputra (M) Sdn Bhd & Ors*

[1997] 2 MLJ 805 (*'Kimlin'*). Hakim Mahkamah Tinggi telah memakai apa yang beliau merujuk sebagai tafsiran 'golden rule' untuk menentukan tujuan di mana s 254 digubal untuk menangani. Hakim telah membenarkan saman peminjam-peminjam (lihat [2000] 5 MLJ 421). Perayu telah merayu.

Diputuskan, membenarkan rayuan tersebut:

(1) Kenyataan di dalam *Kimlin* mengenai peruntukan-peruntukan Kanun tersebut bahawa pemberi gadaian tidak boleh berkontrak di luar daripadanya dibuat di dalam konteks yang agak berbeza. Ia adalah dibuat di dalam konteks cubaan oleh pemegang gadaian untuk mendahului sepenuhnya peruntukan-peruntukan Kanun tersebut yang memerlukan secara mandatori suatu jualan kehakiman hartanah gadaian tersebut. Tiada apa-apa pun di dalam penghakiman Mahkamah Persekutuan tentang sebarang rujukan kepada ketidakmampuan di pihak pemberi gadaian berdaftar untuk bersetuju kepada tempoh notis yang kurang (lihat ms 102E–F).

(2) Terdapat salah faham yang serius dan penting di dalam minda hakim berkenaan dengan bentuk dan kandungan peraturan penafsiran yang beliau telah memakai kepada kes di hadapannya. Adalah tidak dipertikaikan bahawa peruntukan-peruntukan Kanun Tanah (Bab 138) meliputi hubungan antara pemberi gadaian dan pemegang gadaian tanah sebelum Kanun digubal. Jadi, jika adalah niat hakim untuk memakai peraturan 'mischief', beliau terpaksa melihat kepada keadaan undang-undang yang terdahulu. Tetapi, tiada apa-apa pun di dalam penghakimannya di mana hakim menilai kedudukan yang terpakai sebelum penggubalan s 254 Kanun tersebut. Beliau juga tidak memberi perhatian yang secukupnya kepada tujuan sebenar di mana peruntukan tersebut digubal. Ketinggalan-ketinggalan ini adalah terjumlah kepada salah arah serius yang terjumlah kepada salah arah dari segi undang-undang. Ia telah mencacatkan secara asas kesimpulan yang dicapai oleh hakim tersebut (lihat ms 102G–H).

(3) Adalah jelas dari s 138(i)(a) Kanun Tanah (Bab 138) bahawa notis statutori kepada pemberi gadaian tidak boleh kurang dari 30 hari. Jadi apabila Parlimen telah menggubal s 254(1) Kanun tersebut dan meletakkan di dalamnya perkataan-perkataan 'atau tempoh alternatif yang boleh diperuntukkan di dalam gadaian', ia jelas berniat dengan ayat tersebut untuk mengubah undang-undang dengan membolehkan seorang pemegang gadaian untuk mengenakan suatu tempoh yang kurang dari sebulan. Seksyen 254 Kanun tersebut secara nyata membenarkan seorang pemberi gadaian secara kontrak menerima suatu notis statutori yang kurang dari sebulan (lihat ms 104I–105B, 105E–F).]

A **Notes**

For cases on notice of demand, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1645–1659.

Cases referred to

B *Belay v Saskatchewan Government Insurance* [1992] OR (3d) 371 (refd)
Citibank NA v Jong Tze Khiok & Anor [1993] 3 MLJ 449 (refd)
Eastman Photographic Materials Co Ltd, The v The Comptroller-General of Patents [1898] AC 571 (refd)
C *Heydon's case* (1584) 76 ER 637 (refd)
John Burke Ltd v Insurance Commissioner [1963] Qd R 587 (refd)
Kimlin Housing Development Sdn Bhd (Appointed receiver and manager) (In liquidation) v Bank Bumiputra (M) Bhd & Ors [1997] 2 MLJ 805 (refd)
Lim Phin Khian v Kho Su Ming [1996] 1 MLJ 1 (refd)
D *Mahammed Hushen v Jamini Nath* AIR 1938 Cal 97 (refd)
Pepper v Hart [1993] 1 All ER 42 (refd)

Legislation referred to

E Automobile Insurance Act 1953 s 62 [Can]
Interpretation Act 1948 s 17A
Interpretation Act 1967 s 17A
Land Code (Sarawak Cap 81) s 148
Land Code (Cap 138) s 138(i)(a)
National Land Code 1965 s 254(1)
F Patents, Designs and Trade Marks Act 1883 s 64
Patents, Designs and Trade Marks Act 1888 s 10
Transfer of Property Act 1882 s 53A

Appeal from: Originating Motion No S2–21–151 of 1998 (High Court, Kuala Lumpur)

G *C Abraham* (*J Kannaperan* and *Rishwant Singh* with him) (*Shearn Delamore & Co*) for the appellant.
K Periasamy (*Periasamy & Co*) for the first and second respondents.
Asmabi Mohamed (Senior Federal Counsel, Attorney General's Chambers) for the third respondent.

H **Gopal Sri Ram JCA** (delivering judgment of the court): This appeal raises a short point of construction. It has to do with s 254(1) of the National Land Code 1965 ('the Code'). That provision reads:

(1) Where, in the case of any charge, any such breach of agreement as is mentioned in sub-s (1) of s 253 has been continued for a period of at least
I one month or such alternative period as may be specified in the charge, the chargee may serve on the chargor a notice in Form 16D —

(a) specifying the breach in question;

(b) requiring it to be remedied within one month of the date on which the notice is served, or such alternative period as may be specified in the charge; and

(c) warning the chargor that, if the notice is not complied with, he will take proceedings to obtain an order for sale.

This is the way in which the matter arose.

The first and second respondents are the registered proprietors of a property. We shall, for convenience, refer to them as 'the borrowers'. They charged the property to the appellant ('the bank') as security for a loan. But they made default. So the bank took steps to recover the loan and interest. It gave the borrowers seven days' notice to remedy the default. That was the period prescribed in the annexure to the charge. The notice was in Form 16D as required by s 254(1) of the Code. The borrowers did not comply. The bank then commenced foreclosure proceedings before the land administrator. That is because the property is held under a Mukim or Land Office title. The land administrator allowed the bank's application and granted an order for the sale of the property by public auction. The borrowers then took out an originating summons against the bank and the land administrator. They claimed a declaration that the order for sale made by the land administrator is null and void. They also prayed for certain consequential orders. The learned judge who heard the summons granted the relief sought by the borrowers (see [2000] 5 MLJ 421). The bank appealed.

The case for the borrowers is that the section calls for a minimum period of one month and that the words 'or such alternative period' refer to a period of more than one month. They argue that s 254 of the Code was enacted for the protection of a chargee. A chargee cannot therefore contract out of the provisions of the section by agreeing to a notice period of less than one month. As against these arguments, the bank contended that the section permitted the parties to a charge to agree to any period less than a month.

The learned judge rejected the bank's argument in these words (at p 427D–E):

> If I am to give a restricted interpretation to s 254(1) as is urged upon me by the respondents then surely the legislature would have merely omitted that part of the provision which states, 'of at least one month' and would have merely said 'continued for a period as is specified in the charge'. Further the fact that the first option is for a period of at least one month clearly envisages that the alternative period must be in excess of that one month and nothing less. This court must look at the mischief which had to be cured and in addition this court will have to look at the cure provided.

Now, when the appeal was called on for hearing, we formed the view that the judge's interpretation of s 254(1) of the Code was wrong. Accordingly, we called on counsel for the borrowers to argue why the appeal ought not to be allowed. His arguments did not persuade us that the judge was right. Accordingly, we allowed the appeal without hearing counsel for the appellant.

A As may be seen, the borrowers' argument is that a chargor cannot contractually agree to accept a notice period of less than one month to remedy a breach of the terms of a charge. In support of their case, they rely very heavily upon certain observations made by the Federal Court in *Kimlin Housing Development Sdn Bhd (Appointed receiver and manager) (In liquidation) v Bank Bumiputra (M) Bhd & Ors* [1997] 2 MLJ 805. It is B a case of much importance in more ways than one. The judge in the present case referred to it in his judgment. We will quote him. This is what he said (at p 427B–D):

> ... By one fell stroke of the pen the chargee has cut short the statutorily given period of time. Freedom to bargain still remains. But that freedom must be C exercised harmoniously with the sole purpose of attaining the object of the need to give the statutory notice. In *Kimlin Housing Development Sdn Bhd (Appointed receiver and manager) (In liquidation) v Bank Bumiputra (M) Bhd & Ors* [1997] 2 MLJ 805, the Federal Court said in no uncertain terms that ss 254–265 of the NLC not only conferred rights upon the chargors but that they were designed 'for their protection' and that such rights could not be D waived nor could the chargor contract himself out of the NLC. Therefore it is also on high authority that I come to the conclusion that whilst the chargor can accept a period of time in excess of the one month default as his period of default, the chargor cannot contract himself out of the NLC which has specifically fixed the minimum period 'of at least one month'.

E Now, *Kimlin*, was a case where a lender had taken a registered charge over immovable property as well as a debenture over all the assets of a chargor. The chargor defaulted. Later, it went into liquidation. The lender had appointed receivers and managers under a power it had reserved unto itself under the debenture. The receivers and managers had a contractual power to sell the chargor's property by private treaty. They wanted to exercise this F power. But they were unsure about its exercise. So, they applied to court for leave to sell the chargor's land. The judge who heard the application said that the receivers and managers could do so. Th effect of his decision was that there was no necessity for the lender to apply to the High Court for an order for sale. In other words, the lender could by-pass the mandatory provisions of the Code. He also held that the liquidation of the chargor had G no effect upon the powers of the receiver and manager. The chargor challenged these findings on appeal. The Federal Court disagreed with the judge. It reversed him. It held that a chargee of land must resort to the provisions of the Code if he wanted to realize his security. It also held that upon a winding up, the contractually appointed receivers and managers had to surrender all assets of the chargor to the liquidator. The judgment of the H Federal Court which was delivered by Edgar Joseph Jr FCJ contains two passages from which the borrowers in the present instance relied. We will quote them.

The first passage is at p 820 of the report. It reads:

I > It is obvious that the relevant portions of the Code — to wit, ss 254–265 — conferring the rights upon chargors aforesaid are designed for their protection. In the case of land held under a Land Office title, the form of title corresponding to Land Office title or subsidiary title, the chargee makes his

> application for order for sale to the land administrator in accordance with the procedure laid down in s 260 et seq of the Code and these are also designed for the protection of the chargor. However, in considering such an application, the powers of the land administrator are limited (see eg *Gurpal Singh v Kananayer* [1976] 2 MLJ 34 at p 36). Thus, any objection as to the validity of the charge must be taken before the courts for it is no defence in the inquiry before the land administrator (see *Suppiah v Ponnampalam* [1963] MLJ 202 at p 204).

The second passage is at p 802 and reads as follows:

> In our view, therefore, the provisions of the Code as to the rights of chargors are designed for their protection and cannot be waived; nor can the chargor contract himself out of the Code. It follows that no power of sale can be conferred by a chargor under the Code on a chargee himself by way of a debenture or power of attorney or otherwise, but proceedings must be brought by the chargee to obtain a judicial sale in accordance with the rigid procedure laid down in the Code. In such circumstances, any power of sale which purports to be conferred on a chargee himself, omitting all mention of notice and periods of default by a debenture or power of attorney and the necessity for obtaining a judicial sale would be invalid and ineffective to entitle a purchaser to be registered as owner. With respect, we must therefore hold that the case of *United Malayan Banking Corp Bhd v Official Receiver and Liquidator of Soon Hup Seng Sdn Bhd* [1986] 1MLJ 75 — in so far as it decides to the contrary — was wrongly decided.

With respect, we do not regard these passages as supporting the borrowers' argument that a chargor cannot by contract agree to accept a period of less than one month from the chargee to remedy a breach of the terms of the charge. The statement in the second of the passages quoted above that the provisions of the Code cannot be contracted out by a chargor was made in quite a different context. It was made in the context of an attempt by a chargee to completely by-pass those provisions of the Code that mandatorily require a judicial sale of charged property. Nowhere in the judgment of the Federal Court is there any reference to an inability on the part of a registered chargor to agree to a lesser notice period. Indeed, the point that has arisen so acutely for consideration in the present appeal did not arise in *Kimlin*.

The judge in the present case purported to apply what he referred to as 'the Golden Rule of construction' to determine the mischief which s 254 was designed to meet. With respect, there was, in our view, a serious and fundamental misunderstanding in the mind of the learned judge as to the nature and content of the rule of interpretation he was applying to the case before him. It is therefore necessary that we say something about this.

Courts have, through their decisions devised for themselves certain guidelines and presumptions for the interpretation of statutes. Although they are now called rules of construction, they are not rules at all. They are merely guidelines. See *Lim Phin Khian v Kho Su Ming* [1996] 1 MLJ 1. However, eminent jurists such as Sir PB Maxwell and Master Wilberforce sought to analyze decided cases on statutory interpretation with a view to

A distilling from them the principles on which courts acted with regard to statutory interpretation. Their analysis led them to formulate four different rules of construction which they thought moved the courts to interpret statutes in a particular way. They termed these as the literal rule, the golden rule, the mischief rule and the purposive rule. More recently, Professor Rupert Cross formulated what he termed as 'the unified contextual B approach'. This in essence combines all these so-called rules in a step by step process to discovering the meaning of statutory language. Each of the suggested methods offer a different approach to the construction of a statute. The literal rule pays attention to nothing more and nothing less than the actual words used by the statute. The golden rule permits the C judicial interpreter in very limited circumstances to supply an omission in a statutory provision where the literal approach leads to absurdity or injustice. The mischief rule looks to the state of the law at the time an Act was passed to see the mischief or defect that Parliament seeks to remedy. Finally there is the purposive approach which is a refinement of the mischief rule. This requires a court to look to the purpose of an Act. What is significant is that D all these differing approaches are used to ascertain what Parliament intended to communicate when it used particular words in a statute. Despite the several available approaches, it is noteworthy that it is the purposive approach that has emerged to hold the field.

Thus, in *Pepper v Hart* [1993] 1 All ER 42 at p 50, Lord Griffiths E said:

> The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation F was enacted.

In our jurisdiction Parliament has given effect to the common law position by requiring a court to apply the purposive approach to all statutes. The relevant provision is s 17A of the Interpretation Acts 1948 and 1967. It reads:

G > In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

To return to the present case, we note that despite the misnomer used by H the judge to describe the appropriate rule of construction, the language of his judgment appears to suggest that he was looking to the mischief rule. Now, to properly apply the mischief rule, a court must have regard to what was said in *Heydon's case* (1584) 76 ER 637. We will quote from the report of that case:

I > And it was resolved by them [the judges] that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law,) four things are to be discerned and considered:

> First — What was the common law before the making of the Act;
>
> Second — What was the mischief and defect for which the common law did not provide;
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> Third — What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth; and
>
> Fourth — The true reason of the remedy: and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo [for private convenience] and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico [for public benefit].

In the early stages of its development, the mischief rule enabled a court merely to have regard to the common law position at the time of the passing of an Act with a view to determining the aim or object of the particular statute under construction. However, by their later decisions, courts extended the rule to include the whole state of the law at the time an Act was passed to see the mischief it sought to cure. There are several examples of such cases.

In *The Eastman Photographic Materials Co Ltd v The Comptroller-General of Patents* [1898] AC 571, the House of Lords examined the previous law contained in s 64 of the Patents, Designs and Trade Marks Act 1883 when interpreting s 10 of the Patents, Designs and Trade Marks Act 1888 which amended the former provision (see the speech of Lord Halsbury at pp 573–574 of the report).

In *Mahammed Hushen v Jamini Nath* AIR 1938 Cal 97, Mukherjea J, when considering s 53A of the Transfer of Property Act 1882 said (at p 101):

> Before I come to the Act itself by which this section was introduced, it may be useful to enquire as to whether the state of law at the time when the amending Act was passed, and the object which the legislature had in introducing the section could throw any light upon its interpretation. This is a permissible matter to look into for the purpose of construing a statute provided it is taken with the warning that we must not strain the language of a statute unduly by attempting to bring it within the supposed intention of the legislature (Maxwell (7th Ed) at p 19).

Again, in *Belay v Saskatchewan Government Insurance* [1992] OR (3d) 371 at p 375, Feldman J, reviewed the legislative history of the Saskatchewan Automobile Insurance Act, including the earlier legislation passed in 1953, when interpreting s 62 of the Act to determine whether an Ontario court had jurisdiction to entertain claims under the Act.

Finally, in *John Burke Ltd v Insurance Commissioner* [1963] Qd R 587, Hanger J, took into account the workers' compensation legislation that had been in force prior to the enactment of the statute he was called upon to construe.

To return to the present case, it is trite that the provisions of the Land Code (Cap 138) governed the relationship between a chargor and chargee of land immediately prior to the enactment of the Code. So, if it was the

learned judge's intention to apply the mischief rule, he was obliged to look to the previous state of the law. Yet, nowhere in his judgment did the learned judge examine the position that obtained before the enactment of s 254 of the Code. Neither did he sufficiently address his mind to the true purpose for which this provision was enacted. These omissions in our view amount to a serious non-direction amounting to a misdirection of law. It fundamentally flaws the conclusion arrived at by the learned judge. It entitles us to intervene and set the matter right.

We begin by examining the state of the law prior to the enactment of the Code. The law as it then stood was encapsulated in s 138(i)(a) of the Land Code (Cap 138). This is what it said:

> If default be made in the payment of the principal sum interest or periodical payment or any part thereof secured by a charge, or in the observance of any agreement expressed or implied in any charge, and such default be continued for the space of thirty days or for such other period of time as may in the charge for that purpose be expressly limited, the chargee may give to the chargor notice in writing —
>
> (a) to pay within a time to be specified in the notice, *but not less than thirty days*, the money due and owing on such charge, or to observe the agreements therein expressed or implied as the case may be ... (Emphasis added.)

Now, it is plain from this section, particularly from the words to which we have lent emphasis, that a statutory notice to a chargor could not be less than thirty days. So, when Parliament enacted s 254(1) of the Code and employed therein the words 'or such alternative period as may be specified in the charge', it clearly intended by that phrase to alter the law by enabling a chargee to impose a period of less than a month. the Code in s 254 therefore expressly permits a chargor by contract to accept a statutory notice of less than one month.

Before concluding, we think it appropriate to refer to the case of *Citibank NA v Jong Tze Khiok & Anor* [1993] 3 MLJ 449. It is a decision of the Supreme Court on the equipollent s 148 of the Sarawak Land Code (Cap 81), sub-s (3) of which reads as follows:

> The notice under sub-s (1) shall comply with the terms of the charge:
>
> Provided that, without prejudice to sub-s (4) of s 145, if no period of notice for the purposes of this section is stipulated by the charge, not less than thirty days' notice shall be given.

Jemuri Serjan CJ (Borneo) said (at p 459) with regard to this provision:

> Obviously, one has to look at the terms of the charge to ascertain and determine the period of the notice since sub-s (3) provides that the notice shall comply with the terms of the charge. The relevant terms of the charge relating to notice is to be found in cl 2(1) already referred to above. The period of the notice was categorically and unequivocally stipulated to be 14 days, and, in the light of the clear provisions of sub-s (3) which was complied with in the instant case, such a notice could not but be valid, and by no stretch of the imagination or other reasonable process of interpretation could the section be interpreted to require the minimum period of 30 days. We do not perceive any

> reasons why, under the circumstances, it was incumbent upon the High Court to seek the aid of the proviso or the legislative history of the section to arrive at the correct construction of the subsection. Clearly, there is no ambiguity in the wording of s 148(3) to justify any resort to aid to construction of the subsection. The proviso, being intended to operate or have the effect of excepting the main provision only where no period of the notice was stipulated in the charge, did not, therefore, apply in the instant case. In the result, the notice, in our view, was valid and effective for the purpose of sub-s (2)(c). Any other construction to the provision of s 148(3) would do violence to the clear and unambiguous language employed in the subsection and render it meaningless.

This passage was cited to the learned judge in the present case. He reproduced it in his judgment. But he distinguished it in the following terms:

> It is obvious therefore that in *Citibank NA* the legislature has clearly spelt out that the parties shall have the right to stipulate the period of time for compliance and if no such period of time was stipulated in the charge, only then would the proviso requiring that not less than 30 days' notice be given, would become effective. But that is not the situation in respect of the case before me.

With respect, we do not agree with the reasoning of the judge. In our view, the close similarity in approach to the question of notice in s 148 of the Sarawak statute and s 254 of the Code fairly justifies the conclusion that both enactments intend the same result. We may add that the judge also failed to have regard to the injunction formulated by the learned Chief Justice of Borneo in the passage quoted above: that it is the duty of a court to render an interpretation that does no violence to the language of an Act of Parliament. Had he adopted this guidance, he would not have fallen into error.

For the reasons already given the appeal was allowed. The orders made by the learned judge were set aside. The borrowers' summons was dismissed. The costs here and in the court below were awarded to the appellant bank. The deposit was ordered to be refunded to the appellant.

Appeal allowed.

Reported by Jafisah Jaafar